IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

O R D E R

(1) S.B.Criminal Revision No. 972/2005
(Mangal Singh & Anr. Versus State of Rajasthan).

(2) S.B.Criminal Revision No. 974/2005
(Mangal Singh @ Mangliya & Anr. Vs. State of Rajasthan)

against the judgment & Order dated 03.09.2005 passed by Additional Sessions Judge, (Fast Track) Hanumangarh in Criminal Appeals No. 38 & 36/05.

Date of Order : 23/05/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Kulwant Singh for the petitioners.
Mr. J.P.S.Choudhary, public prosecutor for the State.

BY THE COURT:-

Both these criminal revision petitions under Section 397/401 Cr.P.C., the petitioners have challenged the judgment and order dated 03.09.2005 passed by Additional Sessions Judge, (Fast Track), Hanumangarh (for short 'the appellate court' hereinafter) in Criminal Appeals No. 38 & 36/2005, whereby the appeals filed by the petitioners against the

judgment and orders dated 28.8.2002 & 03.09.2002 passed by Judicial Magistrate, Hanumangarh (for short 'the trial court' hereinafter) in Criminal Case No. 170/01 (41/2000) & 171/01 (40/2000), were dismissed. Aggrieved by the judgment and order impugned dated 03.09.2005 passed in Criminal Appeals No.38 & 36/2005, the petitioners have filed these two separate revisions.

Since both these revisions involve common question of facts and law and arise between the same parties, with the consent of learned counsel for the parties, they are heard together and are being decided by this common order.

The petitioners were convicted by the trial court in both the cases for the offences under Sections 454 and 380 IPC and sentenced to undergo three years simple imprisonment on each count and a fine of Rs. 300/- in default of payment of fine further to undergo six days simple imprisonment on each count. However, both the petitioners have been acquitted of the offence under Section 457 IPC. The sentences were directed to run concurrently in each case.

By applications being S.B.Cr. Misc. Applications No. 278 & 279/2006 under Section 427 Cr.P.C., the petitioners seek

a direction to run the sentences concurrently awarded to them in both the cases.

Section 427 Cr.P.C. reads as under :-

> **"427. Sentence on offender already sentenced for another offence.-**
>
> (1)When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.
>
> Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.
>
> (2)When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

On perusal of the judgment and order impugned, it nowhere appears that the court below directed the sentences to run consecutively i.e. one after another. Having regard to facts and circumstances of the case, it is directed that the substantive sentences imposed upon both the petitioners in both the cases for the offences under Sections 454 and 380 IPC by the trial

court and affirmed by the appellate court in Criminal Appeals No.38 and 36/2005 shall now run concurrently. However, the sentence in default of payment of fine shall run consecutively i.e. one after another.

At the very outset, learned counsel for the petitioners submits that the petitioners do not challenge their conviction for the offences under Sections 454 and 380 IPC, however, learned counsel has confined his arguments to the quantum of sentence. Learned counsel for the petitioners submits that the petitioners have already suffered the imprisonment of one year and about a month and therefore, requested that the substantive sentence awarded to the petitioners may be reduced to the period of imprisonment already undergone by them.

Learned public prosecutor supported the judgment and orders impugned.

I have carefully gone through the judgment and orders impugned of trial court as well as of the appellate court and the record of the trial court.

The occurrence in both the cases is in close proximity

i.e. on 5.11.99 and 14.9.99. It has not been brought on record that any case of similar nature was either instituted or the petitioners have been convicted previously. From the record, it appears that the petitioners remained in custody for a period of four months during trial and appeal and thereafter for eight months and 21 days. Thus, it appears that the petitioners have already suffered the imprisonment for one year and about a month.

Having regard to the peculiar facts and circumstances of the case and keeping in view that both the petitioners have faced protracted trial and appeal almost for more than six years, and have already undergone the substantial period of imprisonment of one year and about one month and therefore, in my view, the ends of justice would be met, if the substantive sentence of imprisonment is reduced to the period of imprisonment already undergone by them.

Consequently, the revision petitions are partly allowed. While maintaining the conviction of petitioners Mangal Singh S/o Sohan Singh and Jagga Singh S/o Puran Singh, in both the cases, for the offences under Sections 454 IPC and 380 IPC as also the sentence of fine, the substantive sentence of imprisonment is reduced to the period of imprisonment already

undergone by them. It is directed that the sentences awarded by the trial court in Criminal Case No.170/01 (41/2000) and Criminal Case No.171/01 (40/2000) as affirmed by the appellate court in Criminal Appeal No.38/2005 and Criminal Appeal No.36/2005 shall run concurrently. Both the petitioners are in jail. They be set at liberty on deposit of fine, if not required in any other case. The Criminal Misc. Applications No.278/06 and 279/06 stand disposed of.

(H.R.PANWAR),J.

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